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ABSTRACT

This document is designed to help men faced with the legal issues of paternity establishment and the child support system understand the processes and get an overview of the system. Because the laws of the individual states vary, the document is written in general terms and often indicates the circumstances under which the state law or policy will vary. Following a list of the top 10 things a man should understand about the child support system, the questions and answers cover paternity establishment, child support, and visitation and custody. (SLD)

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CENTER ON FATHERS, FAMILIES, AND PUBLIC POLICY

Q&A Questions and Answers for Noncustodial Fathers

A question and answer resource on paternity establishment and child support

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Q&A for Noncustodial Fathers

By Jacquelyn Boggess

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INTRODUCTION

The subject of this document is the legal challenges faced by poor, unemployed, unmarried fathers. The Center on Fathers, Families, and Public Policy (CFFPP) believes that many of these men are (or would be if they were in better economic or social circumstances) interested in establishing a personal and legal relationship with their children. If it is true of men in general, it can be said of most low-income fathers that they want to be good parents, and to the best of their ability, to support their children financially and emotionally.

However, there is a pervasive public perception that welfare is costly to individual taxpayers, and that there is a causal connection between nonmarital births and that cost to taxpayers. In addition, there is a public perception that many unmarried fathers are not interested in supporting their children. In accordance with these public sentiments and perceptions, federal and state law and policy have created an aggressive child support enforcement system. For an unemployed, or low-income, unmarried man, even one who genuinely wants to serve the best interest of his children and attend to their financial needs to the best of his ability, this system can be difficult to negotiate.

Also, the laws and policies pertaining to paternity establishment and child support in the various states and counties in this country are various, inconsistent, and often confusing. CFFPP has written this document to acquaint the reader with the system and to highlight the legal processes involved in paternity establishment and child support enforcement.

The document should be read with a clear understanding of the following realities of the political and legal environment: the law and policies of each of the 50 states are different; federal welfare law directly affects state child support law; and any individual faced with the situations outlined in this document would benefit greatly from assistance from a legal professional.

LEGAL SERVICES

Most people, if they can afford it, employ the services of a lawyer to handle matters as complicated, complex, and serious as those discussed here. In paternity cases, such legal assistance is advisable, regardless of the putative father's opinion as to the child's paternity and regardless of the findings of genetic tests. CFFPP realizes that many low-income, unmarried fathers cannot afford a lawyer. The questions and answers presented here were developed as a source of information to be used by these fathers and by social service professionals who are trying to help these men negotiate the paternity establishment and child support systems.

VARIATIONS IN STATE LAW

The purpose of this document is to help individuals faced with the legal issues of paternity establishment or child support enforcement to understand the processes and to get an overview of the system. We cannot discuss each of the 50 state jurisdictions in this document. Consequently, it has been written in general terms and often indicates circumstances under which state law or policy will vary.

THE TOP TEN

Things You Should Understand About the Child Support System

The court can proceed with your case if you do not show up when required for a court hearing.

You should find out as much as you can about the child support officers you meet with—their titles, their power to make decisions,

and their power to change decisions.

If you disagree with a decision made by an administrative child support officer you may have the right to have a judge address the issue.

You should make certain that you understand any document you are signing.

You should make sure that you understand what the consequences of signing a document are before you sign it.

The fact that you are the father of a child does not mean that you will automatically have a right to visitation or custody of that child unless you get a court order granting you visitation or custody.

Avoiding the child support system and avoiding child support enforcement can make your situation worse.

If you can, pay child support consistently, even if the amount you pay is below the amount you are ordered to pay.

Make sure that you explain and have some written proof of your financial situation so that your child support order can be set at a realistic amount.

You should notify the court or your child support caseworker whenever you lose your job or your income is reduced for whatever reason.

THE LEGAL PROCESS

Why does there have to be a legal process?

Actually, there is no law that says that payments must go through the legal process of paternity establishment. **There is no law that requires a child support order for every child who does not live with both of his or her parents, and there is no law that requires all non-custodial parents to pay child support through the formal system.**

However, if one of the parents of a child wants to have a legal document that declares who the child's father is, or if a custodial parent decides that she wants formal child support from the child's father, **a parent has the right to bring the matter to court.** Once there is a legal decision in these matters, the legal process is in motion.

In addition, if the custodial parent of a child receives welfare benefits, **the state has the right to (and almost always does) put the legal process in motion. The state asks the court for a decision about paternity or an order to force the noncustodial parent to pay child support.**

GALE

So, there are two possible reasons for the initiation of the legal process. One possible reason is that one or both of the parents decides to seek a court order. The other possibility is that the state is providing welfare benefits and therefore decides to start the legal process in order to get reimbursement from the noncustodial parent.

PATERNITY ESTABLISHMENT

What is paternity establishment?

Paternity is fatherhood, the legal identification of the father of a child. The word establishment refers to the fact that the identification

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occurs in a legal setting and is declared by court order.

Paternity is presumed when a man is married to the mother of a child. There is no need for a court order. In the case of a child born outside of marriage, paternity can be established by the written acknowledgment of both of the parents or by a court or administrative order. By federal and state law, a father's name cannot be added to a birth certificate unless paternity has been established or the man has signed a voluntary acknowledgment form (see below).

My child's mother and I want to establish the paternity of our child. How do we do that?

Federal law requires that each state have a process by which a couple can voluntarily acknowledge the paternity of a child. While the baby is still in the hospital, the mother and the father, if he is present, are offered the opportunity to declare the paternity of the child. You can both sign a document that says that you (both) acknowledge that you are the father of the child. This document is referred to by various names depending on the state in which you live. In order to request this document you can ask for a **voluntary acknowledgment of paternity** form. You can most likely get a voluntary acknowledgment form at the hospital when the baby is born. You can also ask for the form at your county or state office of vital records, or at a child support agency office.

In addition to the opportunity to acknowledge paternity voluntarily at the hospital, each state provides opportunities for acknowledgment at a later date. If both parents agree (paternity is not contested), parents can acknowledge paternity in writing at any time and request that an order declaring paternity be entered by the court. The rule in all 50 states is that 60 days after a man has signed a paternity acknowledgment form, the legal presumption that he is the father becomes conclusive and legally binding.

Depending on when paternity is established, adding the father's name to the birth certificate and deciding on the baby's last name (or

changing it) may require additional steps. Ask at your county birth records office how to make these changes or additions. If *both* parents sign the voluntary acknowledgment document in the hospital when the baby is born, the additional steps will likely not be necessary.

What happens after paternity is established?

Once a paternity order has been entered, in the overwhelming majority of cases an order for child support will also be entered. If the parents of a child decide together to establish paternity, they should first discuss the child support order between themselves and, if possible, with an attorney. They should be prepared to answer questions about the father's income and employment situation, and to provide proof of his financial status. Finally, once paternity is established by court order, the man becomes the legal father of that child, with all of the rights and responsibilities of a married father. He has the right to raise the issues of custody and visitation in court and, in most cases, to participate in decisions about the child's schooling, residency, and lifestyle.

What if I have questions about the voluntary acknowledgment form?

State and federal law requires that you get information and an explanation of your rights before you sign the acknowledgment form. If you are signing the form in the hospital, hospital staff should be able to direct you to someone who can answer your questions about the form and about what your signature will mean.

If you are not signing the form in the hospital, you can request that someone from the agency that provided the form give you further information and explanation about the form and about your rights. It is very important, however, if you do not understand the form, the process, your rights, or the consequences of your signature, that you **do not sign the form until you feel confident that you understand what you are signing.**

Also, if you have any questions about whether or not you are the baby's father and you want to be sure, you should get a genetic test before you sign the voluntary acknowledgment form.

What if I sign a voluntary acknowledgment form and later get information to make me believe that I am not the baby's father?

Sixty (60) days after a man has signed an acknowledgment of paternity form the legal presumption that he is the father becomes conclusive and legally binding. By state and federal law, you have the right to rescind (take back) your statement that you are the baby's father. However, you must sign a document that says you take back the acknowledgment within 60 days after you sign the first document. In fact, in some states, the process is even more complex than just signing one document. But no matter what state you are in, the process is always easiest if you act within the 60-day period.

If **after the 60 day period expires,** a man no longer believes that he is the child's father, he must initiate a court action and prove that he signed the document under conditions of fraud (someone lied to him), duress (he was forced to sign), or mistake of fact. This kind of court action is difficult. It is different from a common paternity suit, where the mother or the state is trying to prove that you are the father. In that kind of case (the paternity suit), you get a summons or notice to come to court, and the genetic test is the most important evidence. In this kind of case (where you must prove fraud, duress, or mistake of fact), you have the burden to bring the case (do the administrative work such as filing the petition and making sure the summons and notices go to other parties) and to prove that what you say is true. It is very important, when possible, that an attorney handle this kind of case for you. Obviously, the decision to acknowledge paternity voluntarily is a very serious one and should not be made lightly or without serious thought and preparation.

What if I believe that I am a child's father,
but the mother says that I am not the father?
What if she acknowledges my paternity socially,
but denies me when I want to see my child?

If the child's mother says that you are not the child's father, or denies you access to the child, you can exercise the right given to a father by each state to initiate a suit for paternity. It probably will not be easy to initiate this kind of court case. Most of the state courts of this country do not very often handle cases where a man wants to establish paternity. The state courts and child support agencies are set up to handle paternity cases brought by a child's mother or by the state (when the mother receives welfare benefits). A man instituting this kind of case will need legal assistance and guidance because, generally, the system is not prepared for him to exercise this right.

If the court does enter an order establishing paternity based on your case, it must then consider the issue of child support. In almost every case, the court will enter a child support order. However, state and federal law requires the court to consider issues of visitation and custody at that time only if there has been a request for visitation or custody by one of the parties involved. Therefore, you must make a request to insure that those issues are raised and that a legally binding decision is made.

If I don't sign a voluntary acknowledgment form,
who decides I should be taken to court?
The baby's mother? The welfare office?

If the mother receives welfare benefits, she has no right to make the decision about child support or paternity establishment. She must sign a document that gives that right to the state. The state child support and welfare agencies then make the decision to take you to court. If she does not receive welfare benefits, the child's mother can decide on her own whether or not to take you to court for paternity estab-

lishment and child support.

What if someone names me as the father of a child and says that I owe child support, but I know for sure that I am really not the father?

If you are summoned to court in a paternity suit, the most important thing to do is to appear at the hearing or at the child support office, depending on where the notice tells you to go. You should go to the meeting or hearing whether or not you are the father. If you do not go to court because you know or believe that you are not the father, there may be a full hearing in your absence. At that hearing the court may enter an order declaring you the father of the child and charging you with child support. In fact, if you attend one hearing but ignore further hearings on the case to determine paternity or support, your refusal to appear could result in a warrant for arrest and lead to time in jail.

If you receive a summons or notice in the mail that you must appear in court on a paternity suit and you believe that you are not the father, you should show up at the meeting or hearing and ask for a genetic test. This process of appearing in court or the child support office and providing evidence against your paternity of the child may not go smoothly. It is possible that during this process, your rights under the law may not be protected by the court or the people at the child support agency. Still, it is very important that you **respond to the notice by making an appearance and stating your belief that you are not the father.**

How could the child support office or the court legally declare that I was the father of a child when I was not there and I never took a genetic test?

If you get a notice or a summons about child support and you do not appear on the date set for the hearing, the court can enter an order

against you by **default.** If you do not show up to tell your side of the story, the court can decide that the evidence against you must be true. So if you do not come to court, an order declaring that you are the father of a child might be entered.

This order could be entered whether or not you are the father. Also, depending on which state or county you are in, and how long it took before you found out about the order and raised questions, it might be extremely difficult to have the order vacated.

Can a genetic test really determine whether or not I am a baby's father? Who pays for the genetic test?

Genetic testing can establish the paternity of a child for purposes of legal evidence with a 99 percent accuracy rate. This is not the "blood test" that was the state of the art and widely used in paternity cases until the 1980s. Now, very accurate genetic tests have been developed that are virtually conclusive in determining the identity of a child's father. Under federal law states must have provisions in their laws requiring all parties to a paternity suit to submit to genetic tests upon the request of any party. In each of the 50 states, the results may be entered into the court record as evidence of paternity.

Because of government interest in paternity establishment, state and federal law requires that states pay for paternity tests if necessary. If you are found to be the father of the child, you could be required to reimburse the state for the cost of the test.

GALE

Why is the state so interested in paternity establishment? Why can't the baby's mother and I try to make this decision for ourselves? If we can agree with each other, why can't we make the final decision?

The state is interested in paternity establishment because, by law, the state must have a paternity order to get a child support order. If the mother receives welfare benefits the child support money you pay goes to the state (while she is on welfare) to pay back the state for welfare benefits. In some states the state will pass along to her some portion (usually the first $50) of each payment the noncustodial parent sends.

The state is also interested in paternity establishment because the federal government has decreed that states must attempt to establish paternity for 90 percent of the children born outside of marriage.

Generally, if you and the child's mother have decided to try to make cooperative parenting decisions, the two of you can make the decisions about paternity establishment, and to some extent about a child support order. However, if your child's mother receives welfare benefits, all of those decisions are going to be made by the state. In the great majority of cases, the state will decide to establish paternity.

Can I be legally declared the father of a child if I am under 18?

Yes, a minor can be legally declared the father of a child. However, state laws vary on this point. In some states, a minor can be legally declared the father and have a child support order entered against him. The order may be very low to reflect the fact that the father is a minor and perhaps still attending school. In other states, a minor can sign a voluntary acknowledgment form while he is under 18, but the order does not become effective until some designated period (usually 60 days) after his eighteenth birthday. In these situations, the child support order is usually entered after the father turns 18 years old.

CHILD SUPPORT

What is child support?

Child support is supposed to be an amount of money a parent pays to help take care of his child who (for most of the time) lives in a different residence than that parent. So if your child lives with his or her mother, or with some other guardian, or in foster care, you can be held responsible to pay child support. A legal document called a **child support order** is an order of the family court saying that the parent who does not live with the child must pay a certain amount of money to contribute to the support of the child.

How does the judge or the child support agency decide how much money I should pay in child support?

Each state has established a formula **(child support guidelines)** to calculate what the amount of the child support payment should be. If a judge wants to give you a different child support order (either lower or higher) than the guideline amount depending on your personal circumstances, he or she has to give a reason for not following the guidelines.

Each state has its own formula for determining child support under its child support guidelines. No matter which state you live in, your income and the number of child support orders you already have are important parts of the formula. Depending on your state's laws, the formula may also consider the income of your child's mother, other children who live with you, or other special circumstances.

In most cases, the formula (guideline) **is** used to determine the amount a noncustodial parent should pay. This is especially true because, depending on your county child support system it is often the child support agency rather than the court that calculates the child support amount. The child support agency is usually **required** by the state to use the formula.

If you are faced with a hearing on the amount of child support to

be paid, you should be prepared to explain your employment, financial, and family status in detail. Proof of income, employment, and support responsibilities is crucial to insuring that your child support order is realistic for your circumstances. You should appear in court with payroll receipts, tax returns, and copies of the orders of support for other children.

How could the child support office or the court set a child support order for me if I was not there and they did not know my income?

If you get a notice or a summons about child support or paternity establishment and you do not appear on the date set for the hearing, the court can enter an order against you by **default.** If you do not show up to tell your side of the story, the court can decide that the evidence against you must be true. Therefore, if you do not come to court, a child support order might be entered. This order could become effective whether or not you have a job.

If you do not show up to give information about your income, the child support agency or the court can hear evidence of your income from the mother of your child or from child support agency records. These sources may be incorrect.

The court or the child support agency may also **impute** your income. This means that they assume you could be making a certain amount of money if you wanted to work (usually it is assumed you could make at least minimum wage). Then the court would set a child support order against you based on a minimum wage job.

What if I don't have a job when the child support order becomes effective?

If you do not have a job when the child support order is entered, an income amount can be **imputed.** That is, the child support agency or the court can decide that you could be working if you wanted to and

that the amount you would make would be at least minimum wage. Then the court would set a child support order for you based on a minimum-wage job.

Where do I make the payments?

It is very important that you make child support payments in the manner and at the location your child support order directs payment to be made. Most child support payments are made through automatic withdrawal from your paycheck. Your employer will take the money out of your paycheck before you get it and send the money to the child support agency. However, if you do not have automatic withdrawal from your paycheck, make sure you are making the payments in the right place. **If you do not make the payments in the designated location, you may not get credit for making the payments, and you may still owe the money.**

Why do they take the child support payment automatically out of my check?

Under federal and state law, in the great majority of child support cases, the child support order should require that the money be paid by **income withholding.** There can be exceptions to this very strict rule, but the prevailing policy in your county and the inclination of your judge will determine whether your case can be an exception and you can make the payment yourself.

Can I go to jail for not paying my child support?

Yes, a person can be put in jail for not paying child support. The state uses various laws and policies to determine whether you will be put in jail. Sometimes it is decided that because the court ordered you to pay, and you did not pay (did not follow the court order), you should go to jail. Not doing what you were ordered to do by the court is called **contempt of court.** If the judge sends you to jail for civil con-

tempt of court, you can usually be released as soon as you pay some or all of the money they say you owe in back child support.

You can also be put in jail for nonpayment of child support in a situation where the court has decided that your nonpayment should be considered a crime. In this situation, where nonpayment is considered criminal, you can go to jail (or prison) for a longer time and you cannot be released until you serve your sentence. State criminal laws will determine whether your criminal nonpayment of child support should be considered a felony or a misdemeanor.

Most of the time when a noncustodial parent is put in jail for nonpayment of child support it is for civil **contempt of court**, and the parent can be released upon payment of some amount of money. Often, when the parent obviously does not have the money, he is ordered to go out and look for a job and report back to the court on his progress. This requirement is sometimes called a **seek work order**.

Can the child support office find out where I work?

Yes, by federal law there are state and federal **Directories of New Hires.** Every employer in the country is required to submit the name of every new employee to this directory. State child support offices have access to all the names in this computerized directory. The child support offices can use this computer information to find names of people who owe child support or for whom they want to establish paternity.

I am under 18 years old. Can my parents be ordered to make child support payments for my child if I am not paying it?

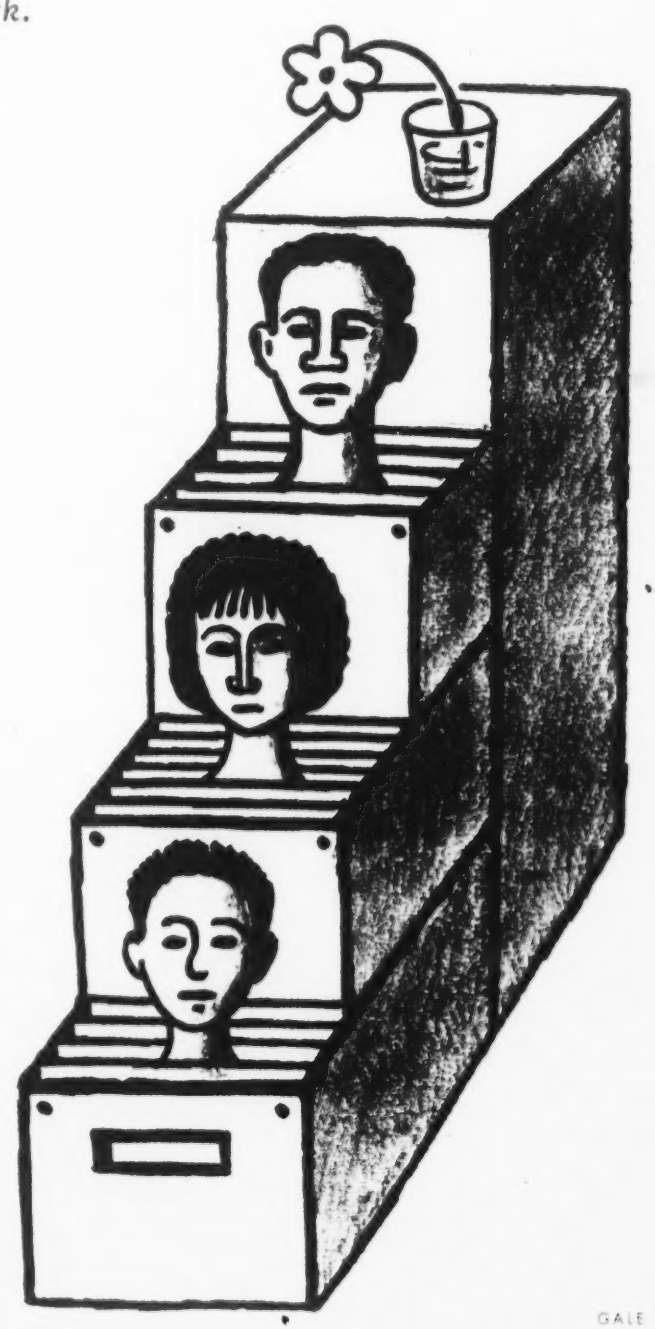
Federal law says that states can make child support enforcement orders enforceable against the parents of a noncustodial minor parent. Many states, however, do not have this kind of law. Some states,

however, do have laws making grandparents liable, in various ways, for the support of grandchildren by their minor children. The applicable law or policy will vary from state to state and within an individual state, from county to county.

I don't understand this legal paperwork. Why is the amount that the child support order says I am supposed to pay different from the amount they take out of my check every two weeks?

If you have ever gotten behind in your child support payments, you may be paying a weekly amount that is higher than the amount stated in your child support order. The amount that is deducted from your check may include the amount of current child support plus some portion of your overdue payments. The back payments you did not make when they were due are called **arrears.** Most states will also charge you interest on the arrears. The interest amount will also be taken from your paycheck.

There are other charges that you may also owe in addition to current support, back support, and interest on back support. If your child's household receives welfare or medicaid benefits, you may also be charged for the time your child was in the hospital when the child was born. You may also be charged with what is called **"state debt,"** which is basically an amount charged to you to pay back the state for welfare benefits the child's



GALE

mother received before paternity was established. Also, sometimes the bill will include a charge to you for court costs or genetic tests.

I have been ordered to pay child support, and I purchase items such as clothing or diapers, or services such as schooling or child care for my child. Might the value of these goods and services be deducted from the child support payment?

At this time, no state or federal law allows these in-kind payments to be applied against the court-ordered child support amount. This issue is being researched in a small number of counties, and in those pilot programs in-kind support is allowed. Generally, however, only cash payments are allowed.

Do I have any say in how the child support money is used?

If your child's mother receives the money you pay in child support, the money is considered to be additional income to your child's household. Because it is additional income and not money designated for the purchase of particular goods and services, the custodial parent has the right and the responsibility to decide how that money should be spent as household income, and ultimately for the benefit of your child.

What if I lose my job while I am expected to pay a child support order?

Many noncustodial parents believe that if they get behind at a time when they are legitimately unable to make the payments, the amount they owe can later be reduced or discounted by the court when an explanation for nonpayment is given. However, if you wait to explain

your changed circumstances, the court will be unable to retroactively reduce the back payments you owe.

The amount of a child support order is based to a great extent on the income of the noncustodial parent. If you lose your job or your income is greatly reduced, you should do two things: (1) notify the child support office of the change in your situation, and (2) find out the process and the rules for getting your child support order changed.

You have a right to request a **review** of your child support order (done by the child support office) every three years, and you can ask for a review at any time based on a change in your circumstances. This change is called a **modification** of your order. Depending on the laws and the process in your state, you can get a modification through the help of your child support office (by starting with the review process) or directly through the court system. If the child support office cannot or will not help you, you should ask for the location of the court in your county that handles family law matters, and try to make a request for modification directly to the court. In order to insure that the payment will be reduced or suspended, you need to obtain an order for modification. Then the payments you owe either will not accumulate, or at least will accumulate more slowly on the basis of a reduced payment.

What if I have child support orders for more than one child?

If paternity was established or you were (or are) married to the mother of your children, you can be ordered to pay child support for each of your children if you do not live with them. State child support guidelines spell out a formula for deciding the amount. Each order should be based on (among other things) the number of children you have to support. If the orders are entered at different times, the fact that you have other child support orders might not be taken into account. If you have more than one order, you should bring that fact to the attention of someone in the child support office to make

sure that each of the orders reflects the fact that you have other children to support.

How long must I pay court-ordered child support?

A noncustodial father must continue to pay court-ordered child support at least until the child reaches the age of 18 years. If your child continues in a secondary or college-level program, however, you might be ordered to continue paying support. The mother's marriage, or remarriage, will not affect the fact that child support and maintenance are expected from the noncustodial father.

What if I give the money directly to my baby's mother?

Depending on the laws and policy in your state and in your local child support office, the money you give directly to the baby's mother may or may not be counted as payment of your child support debt. It is very important that you make the payment at the location and in the manner ordered by the court.

This point is most urgent if your child's mother receives welfare benefits. When she applies for welfare, the custodial parent signs over her right to collect child support payments from you. She signs a document that gives the state the right to collect and keep your child support payments. If you give the payments to her, you will probably still owe it to the state.

Note: This information is not meant to suggest that you should not do everything you can to support your child and your child's custodial parent. It is meant to provide you with information so that you can make informed decisions.

Who is demanding that I pay child support, the state or my child's mother?

It could be either one. A custodial parent who does not receive wel-

fare benefits can decide that she wants to try to collect child support from you. She can get a lawyer for herself or she can ask the state child support agency to help her collect the support from you. In that case, she is requesting the child support order.

However, if the custodial parent applies for welfare benefits, she cannot make the decision. The state requires that she give the name of her children's father and then the state decides how and when to pursue the father for child support. She is also required to sign a document that gives the state the right to collect and keep the child support money that you pay for the child. In some states, the state will pass along to her some portion (usually the first $50) of each payment the noncustodial parent sends.

THE SYSTEM

People keep telling me I need a lawyer to handle my problem. If I cannot afford one, what should I do?

In situations involving paternity establishment and child support, it would be best to have a lawyer. Child support matters can be complicated, and it is difficult for a non-lawyer to understand the process. Obviously, however, many people cannot afford to hire a lawyer. If it is not possible for you to pay for legal services, the first thing to do is try to find a legal services organization that provides the service free. There are not many such free legal service organizations, but they do exist. You should be able to find these types of organizations in your area by contacting your state or local bar association. Ask whether the free legal service organization can provide assistance to noncustodial parents with child support issues.

If you cannot find a legal service organization to help you, you do have the option of filing the papers to make legal responses and petitions for yourself. Doing the legal work for yourself is called acting **pro se.** When you want to ask a court for something (e.g., visitation, a

modification of your child support order, a petition to have yourself declared the father of a child) you should find out where in your county the family court is housed. You then go to the family court, tell them what you would like to do, and tell them you would like to petition the court pro se (for yourself, without an attorney). Some courtrooms will have forms especially created for people who want to approach the court pro se.

Why does the child support agency represent the baby's mother, but no one will represent me?

The child support office cannot be a legal representative for you or the baby's mother. The attorney who brings the child support case against you represents the state. Both you and the baby's mother have the right to have an attorney represent you if you can afford that service.

In addition, in some counties, *in some particular phases of the case,* the noncustodial parent has a right to an attorney paid for by the state if the noncustodial parent cannot afford one. This is not true in all states and counties, and even in those states and counties where you have some rights to an attorney in the child support process, that right to an attorney may not apply to the entire process. For example, in some counties noncustodial parents have a right to an attorney (paid for by the state) only during the process of paternity establishment. In these situations, the attorney is dismissed after paternity is established, and the father is left without an attorney for the child support portion.

The way to find out about the policy or rules for your county is to ask the court or the child support office what the policy is regarding to the right to an attorney.

PARENTING TIME

What about visitation?

If you are seeking a right to visitation and a specific schedule for the visits, you can first try working directly with the mother to come to a reasonable agreement. If you and she come to an agreement, you can then go to court to formalize the arrangement to which you both have already agreed. However, if you and the mother have a hostile or uncomfortable relationship, the agreement will likely have to be arrived at through the courts, and you may need legal representation to insure that you have a chance to gain access to the child.

A noncustodial father has a right to present his position on visitation and custody and to request that the court grant his request. However, you must understand that, generally, the standard the court is supposed to use in making this decision is **"the best interest of the child."** The court may not grant your request for joint custody and visitation if the court determines there is evidence that such an arrangement would not be in the child's best interest, or would, in fact, be harmful.

GALE

If the child's mother refuses visitation, may I refuse to pay court-ordered child support?

No, access to the child for visitation is not a prerequisite for the payment of child support. If a mother consistently refuses to allow visitation, you must return to the courtroom where paternity was established or your child support order or visitation order was entered, and inform the court of the mother's refusal to cooperate.

One important issue that arises here is that of setting a consistent and reliable time for visitation and being willing to follow through on the plan. Once you are in court, if the mother can show that your visitation schedule is erratic and unpredictable, the court will be less likely to demand that she allow visitation on your preferred schedule. Again, the reason for this is that the court is using the best interest of the child as the standard in determining the privileges of the child's parent. If you have not followed your visitation commitment, the argument against keeping that schedule is that it would not be in the best interest of the child if you have not demonstrated a commitment to be consistent.

If, however, you are willing and able to follow a fairly structured visitation schedule and there is no possibility of physical or mental harm to the child, and the child's mother is disallowing the visits at her whim, your only recourse is to return to the courtroom. In some situations, you might be able to access the courtroom **pro se** (without an attorney) and petition the court for adherence to the visitation schedule. However, if you so not have a good relationship with the mother, if the visitation schedule you prefer is complicated, or if no order for visitation was ever entered before, you will probably need the services of a lawyer.

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